

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 - - - - -x
4 BLOCKCHAIN MINING SUPPLY AND
5 SERVICES LTD.,

Plaintiff,

Case No. 18-CV-11099-ALC-BCM

-against-

8 SUPER CRYPTO MINING, INC. (N/K/A DIGITAL
9 FARMS, INC.) And DPW HOLDINGS, INC.
10 (N/K/A BITNILE HOLDINGS, INC.),

Defendants.

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January 10, 2023

11:04 a.m. (EST)

15 DEPOSITION of WILLIAM TENCER, the
16 Plaintiff in the above-entitled action,
17 held via Zoom video conference, taken
18 before Garry J. Torres, a Stenographer and
19 Notary Public of the State of New York,
20 pursuant to the Federal Rules of Civil
21 Procedure, Notice and stipulations between
22 Counsel.

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24 * * *
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1 Tile?

2 A. Working on the order desk.

3 Q. And how many years did you work
4 for Olympia Tile?

5 A. One or two, maybe -- not that
6 long -- or three.

7 Q. And what do you do now?

8 A. Right now, primarily, I'm
9 involved with my holding company called
10 MidCity Capital Limited which is a family
11 holding company taking care of
12 investments.

13 Q. Do you own MidCity Capital
14 Limited?

15 A. It's family owned.

16 Q. What percentage of it do you
17 own?

18 A. I would have to check the shares
19 to see. I would say -- I mean, I can
20 guess if you want me to.

21 Q. No.

22 MR. MANDEL: You shouldn't
23 guess, but if you're able to give a
24 reasonable estimate, you can answer.

25 A. Somewhere in the 20 to

1 30 percent probably.

2 Q. Do you hold equities in MidCity
3 Capital Limited?

4 A. Equity? You mean stocks from --

5 Q. Yes.

6 A. -- public stock?

7 Q. Yes.

8 A. I think there is -- yes, there
9 is a couple of shares, yes, that we own.

10 Q. And are the holdings in MidCity
11 Capital Limited for -- on account of the
12 family that owns it, or is it on -- strike
13 that. Let me rephrase that.

14 Does MidCity Capital Limited
15 hold any of its holdings on behalf of
16 third parties?

17 A. Not as a -- not as a trustee,
18 but MidCity Capital -- some of the shares
19 of MidCity Capital are owned by family
20 trusts.

21 Q. And who manages the trading
22 activity in MidCity Capital Limited?

23 A. I would.

24 Q. Do you receive compensation from
25 managing the trading activity in MidCity

1 well, let me rephrase that.

2 I don't think it was -- I don't
3 know what you mean by "operational."

4 Q. Fair enough. What was Tenco
5 Trading's business purpose?

6 A. I think it was involved in more
7 of foreign currency.

8 Q. Did you have an ownership stake
9 in Tenco Trading?

10 A. Yes, I own it.

11 Q. Okay. When you say "involved in
12 foreign currency," can you just simply
13 kind of elaborate on what that means?

14 A. No, I really couldn't. I have
15 to get advice from my accountant because
16 it was formed for a specific reason.

17 Q. Okay. And if you recall, prior
18 to the formation of MidCity Capital, do
19 you recall who you were employed by?

20 A. My operating company before
21 MidCity Capital and during the start of
22 MidCity Capital was called Timberline Wood
23 Products. I don't think I was employed in
24 the sense of getting salary. I think it
25 was just dividends.

1 Q. Okay. I'm -- so were you an
2 owner of Timberline Wood Products?

3 A. Yes.

4 Q. Were you the sole owner?

5 A. Again, I'd have to check the
6 shareholdings. There probably was some --
7 my wife or there probably was some family
8 split there again.

9 Q. I'm sorry.

10 A. I said I think there may have
11 been a family split on the shares, but --

12 Q. Okay. I didn't hear what you --
13 okay. And is Timberline Wood Products an
14 inactive company today?

15 A. Yes.

16 Q. And what was Timberline Wood
17 Products' operations -- strike that.

18 What is Timberline Wood
19 Products' business purpose?

20 A. It was a distributor of hardwood
21 moldings.

22 Q. Okay. And when was Timberline
23 Wood Products formed?

24 A. Timberline Products formed? I
25 think it was 1991.

1 time anyone from Blockchain Mining learned
2 about Super Crypto?

3 A. Mr. Kalfa found Super Crypto and
4 introduced myself and Darren through an
5 email.

6 Q. If you know, do you know when
7 the first time Mr. Kalfa spoke to
8 Mr. Magot was -- oh, if you know, do you
9 know when the first time Mr. Kalfa spoke
10 to anyone from Super Crypto was?

11 A. No.

12 Q. Okay. And do you recall who
13 your contact was at Super Crypto?

14 A. Darren Magot.

15 Q. And do you recall when the first
16 time you spoke to Darren Magot was?

17 A. I don't recall the date, no.

18 Q. Do you recall --

19 A. It is documented, you know, in
20 an email.

21 Q. Okay. What was your
22 understanding of Mr. Magot's role --
23 strike that.

24 What was your understanding of
25 Super Crypto at that time?

1 MR. MANDEL: Object to the form.

2 But you can answer.

3 A. My understanding from Darren was
4 that Super Crypto was, like, a division of
5 DPW, that they were associated, and they
6 were -- their mandate was to buy machinery
7 and mine Bitcoin.

8 Q. And did you ever communicate
9 with Mr. Magot by telephone?

10 A. Yes, many times.

11 Q. And so when you say that
12 Mr. Magot said -- told you that Super
13 Crypto was a division of DPW, do you
14 recall whether that was by phone or by
15 other means of communication?

16 A. That would have been by phone,
17 when I was getting to know him and
18 understand who they were and extending
19 credit.

20 Q. And what did you understand DPW
21 to be?

22 A. DPW, I understood, was a public
23 company that had many divisions -- many --
24 they had some division, and this was one.

25 Q. Did you understand Super Crypto

1 told to you or not by Mr. Magot?

2 A. The statement that DPW was
3 responsible for the payment was not told
4 to me in those words.

5 Q. Was it told in other words?

6 A. If you -- it was told to me on
7 many occasions that I need to get approval
8 from my CEO to send money. The money is
9 coming --

10 Q. I'm asking -- okay.

11 A. DPW is getting more funding.
12 We'll be paying soon. We'll be picking up
13 the machines soon.

14 How much more specific do you
15 want me to get?

16 Q. Well, let me just ask you this:
17 Were those statements made to you prior to
18 entering into the agreement with Super
19 Crypto?

20 A. Some of them, yes.

21 Q. Which ones?

22 A. I need to get approval from head
23 office, funding is coming from head
24 office -- or I don't know if he used those
25 words; I shouldn't say -- funding is

1 coming from the parent, maybe he would
2 have said. I mean, I relied on the
3 credibility of that public company because
4 all the approvals came from there.

5 Q. Right. I believe you testified
6 earlier that MidCity Capital had -- strike
7 that.

8 Let's go to document number 9
9 which we're going to mark as Defendant's
10 Exhibit 9. It's an email from Joe
11 Kalfa -- or appears to be an email from
12 Joe Kalfa. It's Bates stamped DEFENDANTS,
13 underscore, 940 to DEFENDANTS_956, and
14 appears to be an email at the top from Joe
15 Kalfa to Darren at supercrypto.com sent
16 2/25/2018.

17 Do you see that?

18 A. Yes.

19 Q. Do you recognize the email
20 address in the to field?

21 A. Yes.

22 Q. Whose email do you recognize
23 that to be?

24 A. Darren at Super Crypto.

25 Q. Yeah.

1 A. Yes, that's Darren Magot or
2 Magot. How do you pronounce his last name
3 so I don't --

4 Q. It's Magot.

5 A. Magot, T is silent.

6 Q. T is silent, yes.

7 A. That's Darren Magot's email.

8 Q. Okay. And the subject line is
9 Antminer sale agreement, do you see that?

10 A. Yeah, of course.

11 Q. And then it says, Darren, see
12 attached as discussed on LinkedIn. Let me
13 know any changes. Best regards, Joe
14 Kalfa.

15 Do you see that?

16 A. Yep.

17 Q. Do you know what Mr. Kalfa
18 discussed with Mr. Magot on LinkedIn?

19 A. No.

20 Q. Do you know what Antminer sale
21 agreement in the subject line refers to?

22 A. Yes.

23 Q. What does it refer to?

24 A. The attached agreement.

25 Q. So let's go ahead and -- let's

1 Q. Do you know why Mr. Kalfa -- and
2 let's go to the signature block for the
3 vendor where it says Blockchain Mining
4 Supply & Services, LTD. And you see,
5 underneath, it says, name, Joe Yonah
6 Kalfa; you see that?

7 A. Yes.

8 Q. His title is president, do you
9 see that?

10 A. Yep.

11 Q. Do you know why Mr. Kalfa is
12 identified as the president of Blockchain
13 in this draft?

14 A. No.

15 Q. Was Mr. Kalfa ever the
16 president?

17 A. No.

18 Q. Do you recall whether this
19 version of the asset purchase agreement
20 for the purchase and sale of 1,100 Bitmain
21 Antminer S9s and 1,100 PSUs was ever fully
22 executed?

23 A. I'm sure it was. I don't recall
24 at the moment.

25 Q. Okay. Let's go to document

1 number 10 which we'll mark as Defendant's
2 Exhibit 10. It's a document that's Bates
3 stamped BMS001345 through BMS001354?

4 Do you see that?

5 A. I'm getting it. 1354. Okay.
6 Got it.

7 Q. Okay. And let's go to
8 page 1351.

9 A. What page number is that?
10 There's 10 pages on this document.

11 Q. That's going to be one --

12 A. 1351. Okay. I got it.

13 Q. -- page five.

14 A. Okay.

15 Q. Do you recognize this
16 document -- or the form -- strike that.

17 Do you recognize the form of
18 this document?

19 A. Yes.

20 Q. Okay. What do you recognize it
21 to be?

22 A. It says pro forma invoice on it.

23 Q. Would these have been the
24 invoices that you had received from
25 Bitmain for your purchase of the machines?

1 A. I don't know if this is the
2 actual invoice, or it could have been a
3 predecessor to an actual invoice.

4 Q. What do you mean a "predecessor
5 to actual" --

6 A. Well, pro forma, sometimes,
7 that's used just to indicate that all the
8 terms and conditions are correct and that
9 this is what the final invoice will look
10 like, like a draft invoice, almost. Some
11 companies use that format.

12 Q. Okay. And if you know, are
13 pro forma invoices -- do they -- strike
14 that.

15 Do pro -- do these pro forma
16 invoices ever represent the final invoice?

17 A. Yes, quite often.

18 Q. Okay. Let's go to page 1353 of
19 that. I think that's two more pages down
20 in the PDF.

21 A. Okay.

22 Q. It says -- at the top of the
23 page, it says, Shenzhen Century Cloud Core
24 Technologies, Limited.

25 Do you see that?

1 A. Invoice. Okay.

2 Q. Underneath that it says, to
3 Blockchain Mining Supply & Services LTD.
4 Do you see that?

5 A. Yep.

6 Q. And then there's a date that
7 says, 2018/02/28, do you see that?

8 A. Yes.

9 Q. And then there's a chart with a
10 few columns that appears to represent
11 500 power supplies and 500 Antminer S9,
12 dash, 13.5T, do you see that?

13 A. Yep.

14 Q. Do you know what 13.5T means?

15 A. That's the -- I think the power
16 of the machine.

17 Q. And do you know if this invoice
18 represents -- strike that.

19 Do you know whether this invoice
20 is Blockchain's purchase of the machines
21 that it was intending to sell to Super
22 Crypto?

23 A. Yes, it would have been.

24 Q. Okay. Let's go to the next
25 page, 1354. And you see it says the same

1 kind of company at the top, Shenzhen
2 Century Cloud Core Technologies, Limited?

3 A. Right.

4 Q. And again, a couple of lines
5 down it says, invoice?

6 A. Yes.

7 Q. Then it says, to Blockchain
8 Mining Supply & Services, LTD.

9 Do you see that?

10 A. Yes.

11 Q. And the date of this invoice is
12 2018/03/03?

13 A. Yes.

14 Q. Do you see that?

15 A. Yes.

16 Q. Do you know whether 2018/03/03
17 refers to March 3rd, 2018?

18 A. Well, I would think so.

19 Q. Okay. And here, again, we have
20 this kind of same chart, and it's got
21 600 power supply, 600 Antminer S9, dash,
22 13.5T, do you see that?

23 A. Yes.

24 Q. Do you know whether this invoice
25 is for the machine that Blockchain's

1 purchasing, that it intended to resell to
2 Super Crypto?

3 A. Yes.

4 Q. Okay. And do you know whether
5 you did, in fact, purchase them on
6 March 3rd, 2018?

7 A. No. I think that's the shipping
8 date.

9 Q. That represents the shipping
10 date, the 03?

11 A. Yeah, I would think so. Yeah.

12 Q. Okay. Let's --

13 A. The pro forma invoice was
14 probably used for the wire date, but I'd
15 have to confirm that.

16 Q. Okay. Let's go ahead and pull
17 up document number 11 which we'll mark as
18 Defendant's Exhibit 11. It's a document
19 that's Bates stamped BMS000001 to 000009.

20 A. Hang on. Document 11?

21 Q. Yes.

22 A. Okay.

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. What do you recognize it to be?

1 A. An email from me to Darren.

2 Q. Do you recall sending this
3 email?

4 A. Do I recall, not specifically.

5 Q. Do you have any reason to
6 believe that you wouldn't have sent this
7 email to Mr. Magot?

8 A. No.

9 Q. Okay. There's a -- the subject
10 line says, asset agreement.

11 Do you see that?

12 A. Yep.

13 Q. And you say to Mr. Magot,
14 congratulations, we have a deal. I'm
15 meeting Joe at 11 a.m. to do the
16 inspection. I've attached the executed
17 asset purchase agreement as well as the
18 inspection release form.

19 Do you see that?

20 A. Yes.

21 Q. And so if we go to the document
22 behind that that's marked -- without all
23 those zeros -- BMS 2 through 9, do you
24 know -- and I'll draw your attention to
25 the second to last page, and there's a

1 A. Sorry. What was that question?

2 Q. Sure. Prior to -- aside from
3 Mr. Magot, did you communicate with anyone
4 from either of the Defendants prior to
5 entering into this agreement?

6 A. Prior to -- well, as I said, not
7 directly.

8 Q. Okay. Did you ever ask DPW to
9 be a party to this agreement?

10 A. No, I did not.

11 Q. Did you ever ask DPW to
12 guarantee this agreement?

13 A. No, I did not.

14 Q. Why didn't you ask DPW to be a
15 party to this agreement?

16 A. I never thought there was a
17 need, as I mentioned. We were dealing
18 with a public company. Darren kept
19 referring to DPW as the ones where the
20 approvals were coming from. Todd
21 controlled -- fully controlled the
22 discussions, the negotiations. He was --
23 through Darren, I was speaking to Todd,
24 but I did not speak to Todd directly.

25 Q. Okay. And when you say "Todd,"

1 you're referring to Todd Alt?

2 A. Todd Alt, yes. Yeah. Darren
3 would say he needs to speak to his CEO for
4 approval. As far as I was concerned,
5 Super Crypto was just part of a bigger
6 organization which was a public company,
7 and there's no need to speak to the
8 chairman when you're speaking to, you
9 know, the guy I'm doing business with.

10 Q. I want to kind of hang on to
11 something you said, just that --

12 A. Okay.

13 Q. -- Todd Alt controlled the
14 negotiations. What negotiations did
15 Mr. Alt control prior to entering into the
16 asset purchase agreement?

17 A. He controlled the flow of the
18 funds, when the funds would be available,
19 the dates that we should put on the asset
20 agreement. He wasn't -- there was no
21 negotiation on price; the price was the
22 price. It was only the terms.

23 Q. So I guess -- and I don't want
24 to put words in your mouth, but was it
25 your understanding then that DPW -- strike

1 Mrs., you know, it's the couple that would
2 be paying. So I didn't distinguish
3 between the two. I think you're splitting
4 hairs.

5 Q. Were you aware of Super Crypto's
6 incorporation date at the time you entered
7 into the agreement?

8 A. No.

9 Q. Okay. Prior to entering into
10 this agreement, did you ever ask Super
11 Crypto who its owners were?

12 A. Not in those terms, in those
13 words, no.

14 Q. In what words did you ask them?

15 A. I didn't really ask. When he
16 introduced himself to me, he told me who
17 he was, and he told me he was part of a
18 bigger corporation, public company, being
19 DPW. Otherwise, I would never even have
20 known, to this day, that DPW existed even.

21 Q. Did you understand DPW to own
22 any interest in Super Crypto prior to
23 entering into this agreement?

24 A. I had no idea.

25 Q. And I guess then what, if

1 anything, did you understand to be the
2 affiliation between Super Crypto and DPW
3 prior to entering into this agreement?

4 A. My understanding was that Super
5 Crypto was -- I don't know what the right
6 legal word is, but my understanding was
7 that it was associated or it was a
8 division or it was part of DPW, and being
9 part of such a big company, had the
10 wherewithal to buy this type of -- to make
11 this type of a purchase. It wasn't just a
12 one-man operation spending a million bucks
13 on machinery.

14 Q. And did you review any of DPW's
15 public filings prior to entering into this
16 agreement?

17 A. I don't think I reviewed
18 anything prior to the agreement, although,
19 again, you would have the documentation,
20 but I may have been sent a press release
21 by Darren touting the fact that DPW's arm
22 is buying these machines. Well, I guess
23 that wouldn't be prior to the -- I'm
24 sorry. That would have been after.

25 Q. And if you recall, did you

1 Crypto and DPW?

2 A. Yes.

3 Q. Okay.

4 A. He had told me that it's all
5 part of a public company.

6 Q. Do you know what the
7 relationship between Super Crypto and DPW
8 is today?

9 A. No.

10 Q. Do you know who the owners of
11 Super Crypto are sitting here --

12 A. No. I did not check. I do not
13 know who the owners of Super Crypto are
14 today.

15 Q. Okay. Let's go back to
16 Exhibit 11.

17 A. Exhibit 11?

18 Q. Yeah.

19 A. Okay.

20 Q. And let's go to section 2 --
21 well, let's actually -- let me go to the
22 definition, section 1, and let's just go
23 through 1B and 1C. Do you see that? It's
24 on page -- it's on the second page of that
25 Exhibit 11.

1 released upon payment.

2 Q. And where are you reading that
3 from?

4 A. Section A, Number 2, balance,
5 the first balance.

6 Q. Okay. And that's on
7 page BMS0003, correct?

8 A. 3, yeah.

9 Q. Okay.

10 A. And then the second balance will
11 then be applied to the 600 machines.

12 Q. Okay. And where are you reading
13 from for that?

14 A. Triple I in section 2 under
15 purchase price.

16 Q. Okay.

17 A. There's an A and then an I,
18 double I, triple I.

19 Q. Okay. Let's go ahead and look
20 at section 3 of this agreement which
21 states, in the event purchaser fails to
22 pay the balance to vendor on or before
23 April 15, 2018, the deposit funds shall be
24 forfeited to the vendor. And the
25 remainder of this agreement, save and

1 accept for article 2A1 and article 3,
2 shall be null and void, and all parties
3 shall be relieved of its further
4 obligations herein.

5 Do you see that?

6 A. Yes.

7 Q. What did you understand that
8 provision to mean?

9 A. Just what it says, that there
10 would be -- the deposit would be forfeited
11 if he doesn't come up with the balance.

12 Q. And what's -- do you know which
13 balance that's referring to?

14 A. That would be for the full
15 1,100 machines.

16 Q. Okay. And who is the "he"?

17 A. The "he"?

18 Q. You said if he came up -- if he
19 didn't come up with the balance. Who were
20 you referring to?

21 A. I'm referring to the customer,
22 the Super Crypto in this case.

23 Q. Okay. And do you know who
24 drafted this provision of the agreement?

25 A. No. It was an attorney, but I

1 don't know. I think this is, more or
2 less, a standard agreement that we have
3 used in the past with different dates.

4 Q. Okay.

5 A. I have to check which attorney
6 did it or checked it over.

7 Q. Okay. And so is it your
8 understanding then that if Super Crypto
9 paid you the deposit of \$163,625 and then
10 made no further payments on or before
11 April 15, 2018, Blockchain would keep that
12 deposit and this agreement is null and
13 void?

14 MR. MANDEL: Objection.

15 A. If you went by this agreement
16 and not subsequent amendments, yes, but
17 this agreement changed many times in
18 regards to dates of when payments were due
19 and so on that both parties had agreed to.

20 Q. We'll get -- we'll delve further
21 into that. My question to you is: Again,
22 when you entered into this agreement, did
23 you understand then that as of April 15,
24 2018, there was a possibility that the
25 only payment you would receive is

1 adjusting payment dates and scheduling --
2 and I'm sure you'll get to it later -- you
3 see that they kept making payments all
4 along, well after this payment date
5 because we had agreed to extend the terms.

6 Q. Well, that's, I guess -- while
7 we're on this point right now, do you know
8 which terms were -- do you know whether
9 section 3 was one of the terms that you
10 agreed to extend?

11 A. I don't know what section 3 -- I
12 don't know. I'd have to analyze the
13 wording, but the payment for the balance
14 of the machines was extended and extended
15 and extended many, many times.

16 Q. Okay. I'm sorry if you alluded
17 to this, but let me just ask it in a
18 formal way. Do you know whether Super
19 Crypto and Blockchain ever executed an
20 amendment to this agreement?

21 MR. MANDEL: Object to the form.
22 But you can answer.

23 A. Not in an agreement form; only
24 by email were there amendments.

25 Q. Okay. Do you know what the fair

1 market value of the machines was on
2 April 16, 2018?

3 A. I do not.

4 Q. Okay. Do you know what the fair
5 market value of the machines was on
6 April 17, 2018?

7 A. I do not.

8 Q. Okay. Let's go ahead and pull
9 up -- to the extent you can keep 11
10 somewhere close by minimized if you can't
11 keep it side by side -- but let's pull up
12 document number 13. It's a document
13 that's Bates stamped BMS000728 to
14 BMS000729. Do you see that?

15 A. I see it now, yep.

16 Q. Let's go to the email on 728 at
17 the bottom of the chain. Looks like it's
18 an email from Willy Tencer dated April 17,
19 2018, to Thomas Rose. Subject line, wire
20 instructions. Do you see that?

21 A. This on Number 13 attachment?

22 Q. Yeah, it's on 13. It's on the
23 second page of it.

24 A. I see Thomas Rose.

25 Q. At the bottom there's an email.

1 It says, from Willy Tencer, sent Tuesday,
2 April 17, 2018, to Thomas Rose. Subject,
3 wire instructions.

4 A. I'm looking for it. I see
5 attached instructions. Can you send this
6 a.m.

7 Q. Yeah. Look just on top of that.

8 A. I said, thanks. We will --

9 Q. No. No. No. Below that. You
10 see it kind of has a from --

11 A. -- to Thomas, wire instruction,
12 yes.

13 Q. Yeah. Yeah. Okay.

14 A. Okay. I see that.

15 Q. In the email, you write,
16 attachment -- who is Thomas Rose?

17 A. Thomas Rose was the attorney who
18 had the money, the escrow guy. DPW
19 deposited the money with Thomas Rose.

20 Q. And why do you say that "DPW
21 deposited the money with Thomas Rose"?

22 A. That was the arrangement. They
23 were going to put the money in with the
24 lawyer, and after their inspection, the
25 money was to be released upon their

1 that he's referring to in his email?

2 A. The purchaser.

3 Q. And who is the purchaser?

4 A. I think we've been down this
5 road before.

6 Q. I mean, if you know, who is the
7 purchaser that he's referring to?

8 A. Well, Super Crypto signed the
9 asset agreement.

10 Q. Okay. And do you know what he
11 meant by "they can buy this same item now
12 for 1,070 now from Bitmain"?

13 A. Yes.

14 Q. What does that mean?

15 A. That means the market had gone
16 down for type of equipment, the demand has
17 gone down, the price to buy the equipment
18 went down.

19 Q. Do you know whether this
20 represents the fair market value of the
21 equipment as of the date that Mr. Kalfa
22 sent this email?

23 A. Yeah, definitely. Bitmain is
24 the largest supplier of these -- of this
25 equipment in the world.

1 Q. Okay. And so then is it fair to
2 say that the fair market value of the
3 machines was \$1,070 as of April 17, 2018?

4 A. I think that's what you could
5 buy it from Bitmain, assuming they had
6 stock. That's what you could buy it
7 there. With the market, hard to say
8 because there could be other sellers out
9 there for a different pricing.

10 Q. Okay. Do you know why
11 Mr. Kalfa's saying they can buy this item
12 now for 1,070 then?

13 A. He's stating what the Bitmain
14 price list shows.

15 Q. Okay. Do you know whether the
16 Bitmain price list was available to the
17 public?

18 A. Yes, it was.

19 Q. Okay. Let's go ahead and look
20 at document number 14. We'll mark this as
21 Defendant's Exhibit 14.

22 A. Okay.

23 Q. It's a document that was Bates
24 stamped BMS000707 to BMS000713, do you see
25 that?

1 A. Yes.

2 Q. And at the top of the email --
3 the top level email appears to be from Joe
4 Kalfa to you, and it's dated April 4,
5 2018, do you see that?

6 A. Yep.

7 Q. Okay. Do you recall receiving
8 this email?

9 A. I'm going to say I don't recall
10 the moment I received it, but I'm reading
11 it.

12 Q. Do you have any reason to
13 believe you didn't receive this email?

14 A. That's a much better question.
15 No.

16 Q. Okay. Let's go ahead and read
17 your email. It says -- or sorry. Not
18 your email; Mr. Kalfa's email to you. He
19 says, Willy, this sounds good; however,
20 I'm still super uncomfortable given that
21 Bitmain still has the much cheaper
22 machines available, and Leo just told me
23 in the next few days pricing will be going
24 down another 10 percent.

25 Do you see that?

1 Q. Okay. Did you -- okay. Let's
2 move on. Let's move on to document 15
3 which we'll mark as Defendant's
4 Exhibit 15.

5 (Whereupon, a recess was taken.)

6 Q. We'll mark document number 15 as
7 Defendant's Exhibit 15. It's an email
8 from -- it's a document Bates stamped
9 BMS000748 to BMS000749.

10 Do you see that, Mr. Tencer?

11 A. Yes, I'm with you.

12 Q. Okay. And it looks to be an
13 email chain. The top level has an email
14 subject line, the glow or -- re: The
15 Globe and Mail Bitcoin miners facing a
16 shakeout as profitability becomes harder.

17 It's an email from Joe Kalfa to
18 you dated April 20th, 2018. Do you see
19 that email?

20 A. Yes.

21 Q. Okay. Do you recall receiving
22 this email?

23 A. I think you should ask the
24 question a different way from now on in.
25 I'm sorry. But --

1 Q. No, I understand.

2 A. You have to because I won't
3 recall any of them.

4 Q. I would just -- I will tell you
5 you're not the first witness to tell me
6 that. I'll give you my elevator pitch
7 kind of response which is let me ask the
8 question and make a good faith effort to
9 respond. And whatever it is, you know, if
10 you don't recall, you don't recall.
11 That's fine.

12 A. I won't recall emails from two,
13 three, five years ago, but okay. Your
14 show.

15 Q. Okay. I don't recall if you
16 responded to that question or not.

17 A. I do not recall the email.

18 Q. Okay. Do you have reason to
19 believe you didn't receive this email?

20 A. I do not.

21 Q. Okay. So Mr. Kalfa writes in
22 the email, I -- well, let's go -- I
23 butchered this. Let's start from the
24 bottom of the email chain. It's on
25 page -- on the first page. Seems to be an

1 email from an individual named Sam Vifeman
2 (phonetic) to you at
3 sales@timberline-mldg.com dated April 19,
4 2018; you see that?

5 A. Yeah.

6 Q. Who is Sam Vifeman?

7 A. Personal friend, card buddy, as
8 I mentioned.

9 Q. Okay. So the email on top says,
10 on Friday, April 20th, 2018, at 3:53 a.m.,
11 Willy Tencer wrote, my card buddy Sam sent
12 me this. Was in today's Globe and Mail.
13 Even though things are looking good, I'm
14 still pretty nervous.

15 Do you see that?

16 A. Yep.

17 Q. Okay. What did you mean by
18 "even though things are looking good, I'm
19 still pretty nervous"?

20 A. I meant that their discussions
21 with me -- Darren's discussion, the
22 purchaser's discussion with me and the
23 promises sounded good and was very hopeful
24 to get paid, but until the money's in the
25 bank, it's not a deal, as they say.

1 Q. Okay. And if you know, as of
2 April 20th, 2018, did Blockchain have any
3 other prospective purchasers for the
4 machines?

5 A. No.

6 Q. Do you know whether Blockchain
7 was advertising --

8 (Whereupon, simultaneous
9 conversation took place disrupting the
10 record, and the court reporter
11 requested one person speak at a time
12 without interruption from anyone
13 else.)

14 Q. Do you know whether Blockchain
15 was advertising the machines to
16 prospective purchasers --

17 (Whereupon, simultaneous
18 conversation took place disrupting the
19 record, and the court reporter
20 requested one person speak at a time
21 without interruption from anyone
22 else.)

23 Q. Do you recall -- I'm going to
24 withdraw the question. It's fine.

25 Let's go to Mr. Kalfa's

1 to entering into this agreement?

2 MR. MANDEL: Yeah. I'm going to
3 object to the form. That does call
4 for total speculation.

5 MR. VOLYNSKY: I get it.

6 MR. MANDEL: If you can answer,
7 you can go ahead.

8 But note my objection.

9 A. I don't know.

10 Q. Okay. If you know, did DPW ever
11 execute a guarantee in favor of
12 Blockchain?

13 A. Nothing executed; only verbal.

14 Q. Okay. And if you know, did DPW
15 ever enter -- well, if you know, did DPW
16 ever enter into any formal agreements with
17 Blockchain?

18 A. No.

19 Q. Okay. Let's go to document
20 number 17 which we'll mark as Defendant's
21 Exhibit 17.

22 A. Okay.

23 Q. You pulled it up? All right.
24 At the top of the chain, the top of
25 page BMS00765 appears to be an email from

1 Joe Kalfa to Willy Tencer dated May 7,
2 2018. Subject, re: Serial numbers.

3 Do you see that?

4 A. Yeah.

5 Q. Do you recall receiving this
6 email?

7 A. No.

8 Q. Do you have any reason to
9 believe you didn't receive this email?

10 A. No.

11 Q. Okay. And Mr. Kalfa says,
12 Willy, that's good, but do you see any
13 chance of squeezing an additional deposit
14 of some sort or getting a new written
15 agreement that they will sign where we can
16 get them to commit some more in a more
17 forceful term that they will absolutely
18 pay the full balance and pick up no later
19 than 10 days from today.

20 Do you see that?

21 A. Yeah.

22 Q. Okay. As of May 7, 2018, was
23 Super Crypto in default under the
24 agreement?

25 A. I believe so.

1 ever demand payment from DPW of amounts
2 that were purportedly owed under the
3 agreement?

4 MR. MANDEL: I'm sorry. I
5 missed that. Could you just read that
6 back for me?

7 (Whereupon, a portion of the
8 record was read back.)

9 "QUESTION: And if you know, at
10 any time prior to Blockchain's
11 retention of Cowan, Liebowitz &
12 Latman, did Blockchain ever demand
13 payment from DPW of amounts that were
14 purportedly owed under the agreement?"

15 A. There was no formal demand;
16 there were just ongoing negotiations and
17 offers to continue the negotiations and
18 send bits and pieces of money and so on
19 from DPW.

20 Q. When you -- go ahead.

21 A. I was going to say DPW took on
22 the negotiations. I had direct contact
23 with Todd in asking for wires, and he was
24 confirming the wires are going. There was
25 no formal agreement, but it was very

1 break. It doesn't have to be this
2 minute, but --

3 MR. VOLYNSKY: No. Let's take
4 it because I do want to ask you
5 something off the record.

6 (Whereupon, a recess was taken.)

7 Q. Let's go ahead and pull up
8 document number 21 which we'll mark as
9 Defendant's Exhibit 21 for identification.
10 It's a document that's been stamped --
11 Bates stamped BMS000282, do you see that?

12 A. Coming up.

13 Q. Okay. Let me know when you have
14 it up.

15 A. Yep.

16 Q. And it's an email from Ronald
17 Meister dated July 3rd, 2018, to
18 hnisser@srfkllp, trose@srfkllp. Subject
19 line is Super Crypto and DPW.

20 Do you see that?

21 A. Yeah.

22 Q. And in the last sentence of the
23 email it starts with, in the absence of
24 receipt of full payment, now overdue by
25 over two months, want enforceable payment

1 plan by Super Crypto guaranteed by DPW.

2 Do you see that?

3 A. Yeah.

4 Q. Was it Blockchain's
5 understanding, at this time, that the
6 payment provisions of the agreement were
7 unenforceable as against Super Crypto?

8 MR. MANDEL: Object to the form.

9 A. Yeah. I wouldn't know.

10 Q. Okay. Was it your
11 understanding, as of the date of this
12 email, that section 3 of the agreement --
13 that the date in section 3 of that -- the
14 agreement had been extended?

15 MR. MANDEL: Object to the form.

16 A. Yes. Yes.

17 Q. To what date had it been
18 extended?

19 A. It was changing. It was
20 ongoing. Every time they would make a
21 payment, there was no specific date, but
22 we were working with them to get it
23 resolved.

24 Q. Okay. Do you know then, as of
25 the date of this email, whether the date

1 So maybe that's the answer to
2 your question.

3 Q. That's a good catch. Do you
4 know if that's -- the notice in paragraph
5 54 is the formal notice that you were just
6 referring to?

7 A. Okay.

8 Q. Do you know whether that's the
9 formal notice you were just referring to?

10 A. Well, based on what I'm reading,
11 that's what I'm assuming.

12 Q. Okay. Let's go -- let's move on
13 then to document number 22 which we'll
14 mark as Defendant's Exhibit 22 for
15 identification. It's a single-page
16 document. It's marked DEFENDANTS,
17 underscore, 003198. Do you have it up in
18 front of you, Mr. Tencer?

19 A. Yeah.

20 Q. It appears to be an email from
21 you, Willy Tencer, sent July 16, 2018, to
22 todd@dpwholdings.com, Joe Kalfa, Darren
23 Magot and toddalt@gmail.com. Subject,
24 call. Do you see that?

25 A. Yeah.

1 A. I don't know.

2 Q. I guess what I'm asking is: If
3 Mr. Magot is telling you that Super Crypto
4 is unable to pay \$27,000, why aren't you
5 attempting to resell the machines after
6 receiving this email?

7 A. Because we were constantly
8 working with them and adjusting the terms.
9 And, you know, every other day or every
10 other week, we would you get a small wire,
11 and they kept dragging us on. If you read
12 the correspondence, you'll see, you know,
13 we want the machines. Work with us.

14 And we just kept working with
15 them and adjusting the payment schedule.
16 So there was no legal basis, I don't even
17 think, for selling the machines. Plus if
18 I were to try to sell the machines at that
19 point, the amount that we would get would
20 be so small, we'll try to take our chances
21 and work it out with the original
22 customer.

23 Q. Okay. How do you know -- I want
24 to hang on to something you just said.
25 You said if you were to try to sell the

1 A. If I asked for documentation to
2 see --

3 Q. Yes.

4 A. -- if they could afford to pay?
5 No, I did not ask for anything. We were
6 dealing with a public company. It was the
7 farthest thing from my mind.

8 Q. Why do you -- I just kind of
9 want to -- I want to understand what you
10 mean by "they were" -- "it's a public
11 company so that was the farthest thing
12 from my mind." I mean, what is -- what
13 kind of assurances are you relying on by
14 the fact that it's a public company?

15 A. I guess it's an image that
16 public companies have. I don't know.
17 Again, I don't play the stock market. So
18 I'm not so well versed in that area.

19 Q. Well you have a family office,
20 correct?

21 A. I have a family office. I do
22 investments, but we don't -- very, very
23 little trading going on. A couple of long
24 term stocks, and that's it.

25 Q. Okay.

1 Q. Right next to it.

2 A. I know.

3 Q. BU18-1006.

4 A. Now, I'm looking at -- a little
5 closer now. So the BU18-1006, 27,000, if
6 we add up those payments, the negative
7 numbers being -- yeah. That invoice
8 actually was paid off on July 26th.

9 Q. Okay.

10 A. And this one here outstanding,
11 looks like 9,300 is still outstanding. So
12 maybe I was referring to that amount --

13 Q. Okay.

14 A. -- in my email. I hope that
15 clears that up.

16 Q. It does. Let's go back to
17 Exhibit 26. I guess just keep 25
18 minimized or handy to the extent you think
19 you may need it again.

20 Do you recall then what the
21 payment schedule was as of August 21,
22 2018?

23 A. There was no schedule. There
24 was -- it was unilateral by Mr. Todd how
25 much he felt like sending to keep us at

1 call it, four-figure payments, correct?

2 A. Yeah.

3 Q. Okay. And so my question to you
4 is: Here we are at August 21st, 2018.
5 We're about four months removed from the,
6 I'll call it, you know, the date in
7 section 3 of the agreement that we had
8 looked at. There is no, it seems like,
9 concrete payment schedule. So -- and was
10 there a -- as of this date, again, a
11 definitive date when everything would be
12 paid off?

13 MR. MANDEL: Object to the form.
14 But you can answer.

15 A. I think it's very clear. You
16 know, we kept asking for money, he kept
17 delaying, sending small amounts. We
18 weren't anxious to start an action. We
19 knew that the equipment was worth a
20 fraction of what he committed to pay. So
21 we played his game. I mean, he just kept
22 stalling and stalling. You know, a little
23 bit of money is better than nothing.

24 So there really was no
25 alternative for us. It's not like we

1 could have gone and sold the equipment for
2 the contracted price or even a small
3 discount, then we would have done that.
4 They really had us a tough spot.

5 So he was in control. He said,
6 I'll send you 1,000. I'll send you 5,000.

7 We worked with it, showing him
8 that we're cooperative, even though --

9 Q. Let me ask you: When Mr. --
10 when you say "he," are you referring to
11 Mr. Alt?

12 A. Yes, Todd.

13 Q. When Mr. Alt would say that
14 he'll send you 1,000, did he, in fact,
15 send you 1,000?

16 A. Most of the time, he did, yeah.

17 Q. And again, do you know -- do you
18 know what the fair market value of the
19 machines was at this time?

20 A. I don't know, personally. I
21 know that they were not worth very much
22 compared to what we had paid or what we
23 had sold it for because we didn't go out
24 and sell them or look for customers at
25 that point. We were clinging on to what

1 A. I believe you're required to
2 give a written notice, by law, before
3 selling the equipment.

4 Q. Okay. And do you know whether
5 this was the first time you provided this
6 formal notice required by law to either of
7 the Defendants in this case?

8 A. Yes, it was.

9 Q. Okay. And why -- if you recall,
10 why did you decide to do so on this date?
11 And I don't want any -- I don't want to
12 know any privileged discussion. So if
13 there's a business reason --

14 MR. MANDEL: If you can answer
15 that without disclosing --

16 MR. VOLYNSKY: Yeah.

17 MR. MANDEL: -- legal advice,
18 you can do so.

19 A. The course of events led to
20 this, and this was the appropriate thing
21 to be done at that time.

22 Q. Okay. Had you -- had you spoken
23 to any prospective purchasers of the
24 remaining machines prior to the
25 transmittal of this email?

1 A. I personally did not.

2 Q. Do you know if Mr. Kalfa had
3 spoken to any prospective purchasers for
4 the remaining machines prior to the
5 transmittal of this email?

6 A. I mean, it's best that you ask
7 him. I won't answer for him.

8 Q. Okay. Did you undertake any
9 efforts to locate a prospective
10 purchaser --

11 (Whereupon, simultaneous
12 conversation took place disrupting the
13 record, and the court reporter
14 requested one person speak at a time
15 without interruption from anyone
16 else.)

17 Q. Let me finish the question. Had
18 you undertaken any efforts to locate any
19 prospective purchasers for the machine
20 prior to the transmittal of this email?

21 A. I did not.

22 Q. And do you know whether you
23 reviewed the requirements under the United
24 Nations Convention on Contracts for the
25 International Sale of Goods prior to

1 transmitting this email?

2 A. I did not.

3 Q. Okay. Let's go ahead and mark
4 document number 33 as Defendant's
5 Exhibit 33 for identification. It's a
6 document that's Bates stamped BMS001444 to
7 BMS001448, and it appears to be
8 screenshots from a messaging app that, at
9 the top of each one, says, Nicolas,
10 N-I-C-O-L-A-S, Bonta, B-O-N-T-A, hyphen,
11 Bitcoi, B-I-T-C-O-I, dot, dot, dot.

12 Do you see that?

13 A. Yep.

14 Q. Do you know who Nicolas Bonta
15 is?

16 A. I think he is a worker or owner
17 of Bitfarm. I think, previously, their
18 name was Backbone. They have a large
19 mining operation that we had sold machines
20 to prior.

21 Q. Okay. You said -- and you said
22 two entities there. I just want to make
23 sure I understand what you were saying. I
24 believe you said Bitfarms and Backbone?

25 A. Backbone. I don't recall the

1 Q. Okay. And so do you know
2 whether this was -- and let's -- do you
3 know whether this was the final version of
4 the agreement governing your --
5 Blockchain's sale of the machine -- the
6 remaining machines to Backbone Hosting
7 Solutions Inc.?

8 A. I believe so.

9 Q. Okay. And prior to entering
10 into this agreement with Backbone Hosting
11 Solutions Inc., did you provide any notice
12 to Super Crypto that you were selling
13 these machines for \$168,000 to Backbone?

14 A. Did we provide them with the
15 dollar amount?

16 Q. Yes.

17 A. I don't know if we were
18 obligated to do that. I don't recall if
19 we did.

20 Q. Okay. Did you provide any
21 notice to DPW that you were selling these
22 machines for \$168,000 to Backbone?

23 A. Not that I can recall.

24 Q. Okay. And let's go to -- do you
25 know whether there's any documentation

1 showing the serial numbers of the machines
2 that are being sold pursuant to this
3 agreement marked as Defendant's
4 Exhibit 35?

5 A. I don't know if we have anything
6 in the file. Like, it's possible that
7 they -- that I can come up with it,
8 though, if we don't. It was never
9 received by you, the serial numbers?

10 Q. With respect to this sale?

11 A. With respect to the 600
12 machines, the original 600 machines -- not
13 the original, but the original sale to
14 Super Crypto --

15 Q. Let me just --

16 A. -- I can't remember if we
17 supplied serial numbers, but we did not
18 supply serial numbers to Backbone --

19 Q. Okay. That's my question.

20 A. If that's where you're leading.

21 Q. That's where I was going.

22 That's fine. I want to go to the -- I
23 think they're on section 6 here. Yeah.

24 Let's go to the second page of the
25 section 6, the payment terms.

1 can just email that document to him?

2 MS. CHESTUKHIN: I did, yeah.

3 Q. Have you been able to open what
4 we've marked as Exhibit B? It's
5 Defendant's 2239.

6 A. I'm waiting for an email.

7 Okay. I got it.

8 Q. Are you able to identify
9 Exhibit B as a separate escrow agreement?

10 MR. VOLYNSKY: Objection.

11 A. Yes.

12 Q. And is that your signature that
13 appears on the last page for Blockchain?

14 A. Yes.

15 Q. And does this escrow agreement
16 deal with the 600 remaining machines under
17 the asset purchase agreement?

18 A. Yes.

19 Q. And does it provide under what
20 conditions those machines would be
21 released?

22 A. It provides the money. Escrow
23 account -- I mean, I have to read through
24 it.

25 Q. Let me direct your attention to

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CERTIFICATION

I, Garry J. Torres, a Notary Public
for and within the State of New York, do
hereby certify:

That, William Tencer, the witness
whose testimony as herein set forth, was
duly sworn by me; and that the within
transcript is a true record of the
testimony given by said witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 17th day of January,
2023.



GARRY J. TORRES

[& - 13.5th]

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